

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

LIRICO FENNELL,

Case No. 17-cv-1539 (DSD/TNL)

Plaintiff,

v.

REPORT AND RECOMMENDATION

JULIUS ANTHONY NOLEN, and
BRADLEY REED JOHNSON,

Defendants.

This matter is before the Court on Plaintiff Lirico Fennell's application to proceed *in forma pauperis* ("IFP"). *See* ECF No. 2. In an Order dated June 16, 2017, the Court required Fennell to file an amended IFP application and clarify the nature of his action. *See* ECF No. 3. Fennell's IFP application did not provide sufficient information to determine whether he qualified financially for IFP status and it was unclear whether his initial pleading was an attempt to remove a state court action to federal court. Fennell was instructed to file either a notice of removal that complied with the statutory requirements for filing such an action, ECF No. 3 at 3, or, alternatively, if he did not intend to file a notice of removal, he was instructed to file a complaint that met certain requirements, ECF No. 3 at 3-4. Fennell was given 30 days to comply, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

The deadline to comply has now passed, and Fennell has not filed anything in response to the Court's Order. Moreover, the Order was returned to the Court as undeliverable, ECF No. 4, and Fennell has not notified the Court of any change in his address. In fact, Fennell has not communicated with the Court about this case at all since commencing this action. Therefore, in

accordance with the prior Order, the Court recommends that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.

Date: August 2, 2017

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
for the District of Minnesota

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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).